

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

EVERGREEN RESEARCH AND  
MARKETING, LLC, a California limited  
liability company

No: 2:15-cv-00318-JAD-PAL

Plaintiff,

**Order Denying Without Prejudice  
Ex Parte Application for Temporary  
Restraining Order [Doc. 6]**

vs.

MYSTICAL DISTRIBUTING CO., LTD, a  
Canadian limited partnership, and DOES 1-10,

Defendants.

Plaintiff Evergreen Research and Marketing moves on an *ex parte* basis for an Emergency Temporary Restraining Order and Preliminary Injunction under Rule 65 of the Federal Rules of Civil Procedure and Local Rule 7-5. In a complaint filed on February 23, 2015, Evergreen alleges that Defendants Mystical Distributing are advertising, displaying, and offering to sell an insect-repelling wristband called the “Bug Bracelet” that infringes on Evergreen’s trade dress. *See* Doc. 1. It further alleges that Mystical intends to sell this Bug Bracelet at a trade show in Las Vegas, Nevada, that begins on March 1, 2015. Evergreen therefore seeks a temporary restraining order to prevent Mystical (1) from using Evergreen’s trade dress to advertise, manufacture, produce, sell, or distribute the Bug Bracelet; and (2) from destroying, altering, or otherwise disposing of any documents, electronic files, or business record related to the Bug Bracelet.

Evergreen has presented a persuasive case for the granting of a temporary restraining order. Its supporting exhibits show that the Bug Bracelet sold by Mystical, who used to distribute an insect-repelling wristband of Evergreen’s called SUPERBAND®, uses packaging and marketing banners nearly identical to that used by Evergreen to sell SUPERBAND®. *See* Doc. 6-2 at 12-24. But before I can issue a temporary restraining order, Evergreen must “give[] security “in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or

1 restrained.” Fed. Rule of Civ. P. 65(c). Nowhere in its motion does Evergreen offer to do  
2 this. Nor does it provide any argument or authority that might help me determine what a  
3 reasonable security amount might be in this case.

4 Moreover, there appears to be some confusion about the estimated harm Evergreen  
5 expects to incur should I not issue a temporary restraining order: in its motion, Evergreen  
6 states that the estimated harm is “approximately \$50,000,” Doc. 6-1 at 9; but in the  
7 Declaration of Evergreen President Robert Albert on which Evergreen’s motion relies, the  
8 estimated harm is “approximately \$500,000.” Doc. 6-2 at ¶16. One of these is likely just a  
9 typo. But without more full guidance from Evergreen on how to determine the amount it will  
10 need to give in security to protect Mystical’s interests, I decline to issue the temporary  
11 restraining order it seeks. Evergreen’s motion is therefore denied without prejudice. Should  
12 Evergreen decide to file a new motion for temporary restraining order, the security  
13 requirement laid out in Federal Rule of Civil Procedure should be directly addressed.

#### 14 CONCLUSION

15 Accordingly, it is HEREBY ORDERED that Plaintiff’s Motion for *Ex Parte*  
16 Application for a Temporary Restraining Order [Doc. 6] is **DENIED WITHOUT**  
17 **PREJUDICE.**

18 DATED: February 26, 2015.

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21 Jennifer A. Dorsey  
22 United States District Judge  
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